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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Mark Dillon

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EXAMINER

SPAHN, GAY

ART UNIT

PAPER NUMBER

3635

NOTIFICATION DATE

DELIVERY MODE

03/03/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/658,759	<b>Applicant(s)</b> DILLON ET AL.	
	<b>Examiner</b> Gay Ann Spahn	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-14 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-9,11-14 and 16-19 is/are rejected.
- 7) ☒ Claim(s) 10,20 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 December 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

The drawings were received on 06 December 2008. These drawings are acceptable to the examiner.

### ***Claim Objections***

Claims 1, 2, 11, and 12 are objected to because of the following informalities:

(1) claim 1, line 9, the first occurrence of the word "the" should be changed to the word --a--;

(2) claim 1, line 11, the second occurrence of the word "a" should be changed to the word --the--;

(3) claim 2, line 4, the word "a" should be changed to the word --the--;

(4) claim 11, line 5, the first occurrence of the word "the" should be changed to the word --a--;

(5) claim 11, line 9, the word "a" should be changed to the word --the--;

(6) claim 12, line 3, the first occurrence of the word "a" should be changed to the word --the--.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-3, 6-9, 11-13, and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over LAYNE (U.S. Patent No. 4,349,992) in view of ALEXANDER '397 (U.S. Patent No. 6,405,397).**

**As to claim 1**, LAYNE discloses a bottom pad and leveler assembly for a loading dock comprising:

a first mounting bracket (left bracket 22 in Fig. 3) adapted to be positioned adjacent to a first end of a dock opening (D);

a second mounting bracket (right bracket 22 in Fig. 3) adapted to be positioned adjacent to a second end of the dock opening (D), the second end being displaced a predetermined distance relative to the first end;

a bottom pad (12) extending between the first mounting bracket and the second mounting bracket for engaging a rear portion of a vehicle (truck T) parked adjacent to a loading dock; and

a leveler (dock plate 20) for facilitating the loading and unloading of the vehicle (T) when the vehicle (T) is parked adjacent to the loading dock (B), said leveler (20) including a ramp portion (right of lug 26) and a lip portion (left of lug 26); and

a clearance space (25) formed between the bottom pad (12) and the loading dock (B), the clearance space (25) being adapted to selectively receive a downward portion (lug 26) of the leveler for facilitating the loading and unloading of a vehicle (T) when the vehicle (T) is full.

LAYNE fails to explicitly disclose that the leveler lip is pivotally mounted relative to the ramp portion on a distal end thereof for extending into the vehicle when the vehicle is full and that the clearance space is adapted to selectively receive the leveler lip of the leveler when the leveler lip is pivoted downwardly to be positioned within the clearance space for facilitating the loading and unloading of the vehicle when the vehicle is full and the leveler lip is not able to be lowered into the vehicle.

ALEXANDER '397 discloses a dock leveler (10) having a leveler lip (lip segments 45) which is pivotally mounted (@ 47) relative to the ramp portion (20) on a distal end thereof for extending into a vehicle (5, Fig. 4), wherein a clearance space (unnumbered, but between end of 20 and pad 40 in Fig. 3) is adapted to selectively receive the leveler lip (45) of the leveler (10) when the leveler lip (45) is pivoted downwardly to be positioned within the clearance space for facilitating the loading and unloading of a vehicle (5) when the vehicle (5) is full and the leveler lip (45) is not able to be lowered into the vehicle (5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the bottom pad and leveler assembly of LAYNE by making the leveler lip be pivotally mounted relative to the ramp portion on a distal end thereof for extending into a vehicle so that the clearance space is adapted to selectively

Art Unit: 3635

receive the leveler lip of the leveler when the leveler lip is pivoted downwardly to be positioned within the clearance space for facilitating the loading and unloading of a vehicle when the vehicle is full and the leveler lip is not able to be lowered into the vehicle as taught by ALEXANDER '397 in order to keep the leveler lip protected in back of the pad to prevent damage from a vehicle backing into it.

**As to claim 2,** LAYNE in view of ALEXANDER '397 discloses the bottom pad and leveler assembly of claim 1 as discussed above, and LAYNE also discloses that said first mounting bracket (left 22) includes a first flange (horizontal flange of left bracket 22 in Fig. 5) adapted to be mounted on the loading dock and said second mounting bracket (right 22) includes a second flange (horizontal flange of right bracket 22 in Fig. 5) adapted to be mounted on a loading dock, said bottom pad (12) extending between said first mounting bracket (left 22) and said second mounting bracket (right 22).

**As to claim 3,** LAYNE in view of ALEXANDER '397 discloses the bottom pad and leveler assembly of claim 1 as discussed above, and LAYNE also discloses a first bumper (left 11) mounted adjacent to said first mounting bracket (left 22) and a second bumper (right 11) mounted adjacent to said second mounting bracket (right 22), said bottom pad (12) extending outwardly from said first and second bumpers (11, 11) for providing a resilient engagement with the vehicle (T) parked adjacent to the loading dock (B) for forming a seal therebetween.

**As to claim 6,** LAYNE in view of ALEXANDER '397 discloses the bottom pad and leveler assembly of claim 1 as discussed above, and LAYNE also discloses that

Art Unit: 3635

said bottom pad (12) is vertically adjustable relative to said first mounting bracket (left 22) and said second mounting bracket (right 22).

**As to claim 7,** LAYNE in view of ALEXANDER '397 discloses the bottom pad and leveler assembly of claim 6 as discussed above, and LAYNE also discloses a bottom pad pan (21/16) for supporting said bottom pad (12), said bottom pad pan (21/16) extending between said first mounting bracket (left 22) and said second mounting bracket (right 22) and being mounted relative thereto for selective vertical movement for manually positioning said bottom pad (12) at a proper elevation relative to the vehicle (T) parked at the loading dock (B).

**As to claim 8,** LAYNE in view of ALEXANDER '397 discloses the bottom pad and leveler assembly of claim 7 as discussed above, and LAYNE also discloses that said bottom pad pan (21/16) includes a top angle (top of 16) and a bottom angle (bottom of 16), said top angle (top of 16) is mounted relative to an upper portion of said bottom pad (12) and said bottom angle (bottom of 16) is mounted relative to a lower portion of said bottom pad (12).

**As to claim 9,** LAYNE in view of ALEXANDER '397 discloses the bottom pad and leveler assembly of claim 7 as discussed above, and LAYNE also discloses a first flange member (upper 16) secured to a first end (upper end) of said bottom pad pan (21/16) and a second flange member (lower 16) secured to a second end (lower end) of said bottom pad pan (21/16), said first flange member (upper 16) being adapted to be mounted relative to said first mounting bracket (left 22) and said second flange member

(lower 16) being adapted to be mounted relative to said second mounting bracket (right 22).

**As to claim 11, LAYNE** discloses a bottom pad and leveler assembly for a loading dock comprising:

a bottom pad (12) adapted to be positioned to span an opening (D) in the loading dock (B), said bottom pad (12) disposed relative to a floor surface of the loading dock (B) for engaging a rear portion of a vehicle parked adjacent to the loading dock (B);

a leveler (20) for facilitating the loading and unloading of the vehicle (T) when the vehicle (T) is parked adjacent to the loading dock (B), said leveler (20) including a ramp portion (right of 26 in Fig. 2) and a leveler lip (left of 26 in Fig. 2), wherein the leveler lip (right of 26 in Fig. 2) is located on a distal end of the leveler (20) relative to the ramp portion (left of 26 in Fig. 2) for extending into the vehicle (T) when the vehicle is not full; and

a clearance space (25) formed between the bottom pad (12) and the loading dock (B), said clearance space (25) is adapted to selectively receive a portion (26) of the leveler when the portion 26 of the leveler (20) is positioned within the clearance space (25) for facilitating the loading and unloading of the vehicle (T) when the vehicle (T) is full and the leveler lip (left of 26 in Fig. 2) is not able to be lowered into the vehicle (T).

LAYNE fails to explicitly disclose that the leveler lip is pivotally mounted relative to the ramp portion on a distal end thereof for extending into a vehicle, wherein the clearance space is adapted to selectively receive a the leveler lip of the leveler when



the leveler lip is pivoted downwardly to be positioned within the clearance space for facilitating the loading and unloading of a vehicle when the vehicle is full and the leveler lip is not able to be lowered into the vehicle.

ALEXANDER '397 discloses a dock leveler (10) having a leveler lip (lip segments 45) which is pivotally mounted (@ 47) relative to the ramp portion (20) on a distal end thereof for extending into a vehicle (5, Fig. 4), wherein a clearance space (unnumbered, but between end of 20 and pad 40 in Fig. 3) is adapted to selectively receive the leveler lip (45) of the leveler (10) when the leveler lip (45) is pivoted downwardly to be positioned within the clearance space for facilitating the loading and unloading of a vehicle (5) when the vehicle (5) is full and the leveler lip (45) is not able to be lowered into the vehicle (5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the bottom pad and leveler assembly of LAYNE by making the leveler lip be pivotally mounted relative to the ramp portion on a distal end thereof for extending into a vehicle so that the clearance space is adapted to selectively receive the leveler lip of the leveler when the leveler lip is pivoted downwardly to be positioned within the clearance space for facilitating the loading and unloading of a vehicle when the vehicle is full and the leveler lip is not able to be lowered into the vehicle as taught by ALEXANDER '397 in order to keep the leveler lip protected in back of the pad to prevent damage from a vehicle backing into it.

**As to claim 12,** LAYNE in view of ALEXANDER '397 discloses the bottom pad and leveler assembly of claim 11 as discussed above, and LAYNE also discloses a first

Art Unit: 3635

mounting bracket (left 22) having a first flange (horizontal flange of left bracket 22 in Fig. 5) adapted to be mounted on the loading dock (B) and a second mounting bracket (right 22) having a second flange (horizontal flange of right bracket 22 in Fig. 5) adapted to be mounted on the loading dock (B), said bottom pad (12) extending between said first mounting bracket (left 22) and said second mounting bracket (right 22).

**As to claim 13,** LAYNE in view of ALEXANDER '397 discloses the bottom pad and leveler assembly of claim 12 as discussed above, and LAYNE also discloses a first bumper (left 11) mounted adjacent to said first mounting bracket (left 22) and a second bumper (right 11) mounted adjacent to said second mounting bracket (right 22), said bottom pad (12) extending outwardly from said first and second bumpers (11, 11) for providing a resilient engagement with the vehicle (T) parked adjacent to the loading dock (B) for forming a seal therebetween.

**As to claim 16,** LAYNE in view of ALEXANDER '397 discloses the bottom pad and leveler assembly of claim 12 as discussed above, and LAYNE also discloses that said bottom pad (12) is vertically adjustable relative to said first mounting bracket (left 22) and said second mounting bracket (right 22).

**As to claim 17,** LAYNE in view of ALEXANDER '397 discloses the bottom pad and leveler assembly of claim 16 as discussed above, and LAYNE also discloses a bottom pad pan (21/16) for supporting said bottom pad (12), said bottom pad pan (21/16) extending between said first mounting bracket (left 22) and said second mounting bracket (right 22) and being mounted relative thereto for selective vertical

movement for manually positioning said bottom pad (12) at a proper elevation relative to the vehicle (T) parked at the loading dock (B).

**As to claim 18,** LAYNE in view of ALEXANDER '397 discloses the bottom pad and leveler assembly of claim 17 as discussed above, and LAYNE also discloses that said bottom pad pan (21/16) includes a top angle (top of 16) and a bottom angle (bottom of 16), said top angle (top of 16) is mounted relative to an upper portion of said bottom pad (12) and said bottom angle (bottom of 16) is mounted relative to a lower portion of said bottom pad (12).

**As to claim 19,** LAYNE in view of ALEXANDER '397 discloses the bottom pad and leveler assembly of claim 17 as discussed above, and LAYNE also discloses a first flange member (upper 16) secured to a first end (upper end) of said bottom pad pan (21/16) and a second flange member (lower 16) secured to a second end (lower end) of said bottom pad pan (21/16), said first flange member (upper 16) being adapted to be mounted relative to said first mounting bracket (left 22) and said second flange member (lower 16) being adapted to be mounted relative to said second mounting bracket (right 22).

**Claims 4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over LAYNE (U.S. Patent No. 4,349,992) in view of ALEXANDER '397 (U.S. Patent No. 6,405,397), as applied to claims 1 and 11, respectively, above, and further in view of ASHELIN ET AL. (U.S. Patent Application Publication No. 2002/0152562).**

**As to claims 4 and 14,** LAYNE in view of ALEXANDER '397 discloses the bottom pad and leveler assembly of claims 1 and 11, respectively, as discussed above.

Neither LAYNE nor ALEXANDER '397 explicitly discloses a bottom draft plug movably positioned within said clearance space for normally sealing a lower portion of said clearance space and for selectively being displaced from said lower portion for removing debris disposed within said clearance space.

ASHELIN ET AL. disclose a bottom draft plug (seal 94) movably positioned within said clearance space (unnumbered, but space leveler lip 18 is in when vertical) for normally sealing a lower portion of said clearance space and for selectively being displaced from said lower portion for removing debris disposed within said clearance space.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the bottom pad assembly of LAYNE in view of ALEXANDER '397 by including a bottom draft plug movably positioned within the clearance space as taught by ASHELIN ET AL. in order to prevent drafts from entering the loading dock area from below the leveler.

***Allowable Subject Matter***

Claim 10, 20, and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 1-4, 6-9, 11-14 and 16-19 in the "Amendment In Response to Non-Final Office Action" have been considered, but are not persuasive.

Applicants state that modifying LAYNE in view of ALEXANDER '397 would render inoperative the bumper seal (10) of LAYNE and also that "[b]y modifying the Layne patent to include a leveler with a leveler lip 45 as disclosed by Alexander '397 would destroy the teaching of the bumper seal 10 that forms a part of the invention of the Layne patent." However, Applicants have not given any reason why they believe that modifying LAYNE by substituting the pivotable leveler with the pivotable leveler lip of ALEXANDER '397 for the leveler of LAYNE would destroy the teaching of the bumper seal of LAYNE and the examiner does not agree that it would. The examiner sees no reason that one of ordinary skill in the art could not modify LAYNE by including a pivotable leveler having a pivotable leveler lip, which pivotable leveler lip when pivoted downwardly, would fit in the clearance space or slot (25) between the bumper seal (10) and the angle (23) and the building (b) as shown in Fig. 3.

Again on the top of page 13 of 15, Applicants state that "[o]ne of ordinary skill in this art would not modify the Layne patent in view of the Alexander '397 patent as suggested by the examiner." But again the Applicants give no reason why one of ordinary skill in the art would not modify LAYNE as suggested by the examiner and the examiner sees no reason why one of ordinary skill in the art would not modify LAYNE by the leveler of ALEXANDER '397.

Without Applicants giving specific reasons why one of ordinary skill in the art would not modify LAYNE by the pivotable leveler and pivotable leveler lip of ALEXANDER '397, the examiner is maintaining her rejections based upon LAYNE in view of ALEXANDER '397.

In the last full paragraph on page 13 of 15, Applicants state that LAYNE does not have a clearance space that would require a draft plug. The examiner disagrees. Clearance space or slot (25) as specifically shown in Figs. 2 and 5 is between the bumper seal (10) and the angle (23) and the building (B) flush with the angle 25. The examiner notes that claims 4 and 10 only recites the structure of "a bottom draft plug movable positioned within the clearance space" and this is satisfied by LAYNE in view of ALEXANDER '397 and ASHELIN ET AL. Further, the resulting structure from the combination of LAYNE in view of ALEXANDER '397 and ASHELIN ET AL. is capable of performing the intended use of being "for normally sealing a lower portion of said clearance space and for selectively being displaced from said lower portion for removing debris disposed within said clearance space."

Based on the foregoing, the examiner is maintaining her rejection of claims 4 and 10 based upon LAYNE in view of ALEXANDER '397 and ASHELIN ET AL.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gay Ann Spahn whose telephone number is (571)-272-7731. The examiner can normally be reached on Monday through Friday, 10:30 am to 7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on (571)-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3635

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot/  
Supervisory Patent Examiner, Art  
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/GAS/  
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February 9, 2008